

R E M A R K S

Without acquiescing in any rejection, applicants herein amend claims 53, 57-60 and 64-66 to better claim the invention, which moots the indefiniteness rejections. Support for the amendments can be found at page 3, lines 11-19 (relating to disassociation constants) and page 6, line 23 (relating to basic amino acids). Applicants submit that entry of these amendments after final rejection is appropriate because they will place the application in condition for allowance or at least simplify the issues for appeal. The office action is further discussed below.

The claimed invention is described in the specification as filed

On pages 2-3 of the office action, the examiner rejected claims 53 and 60 for allegedly being overbroad and containing new matter. Applicants respectfully traverse these rejections.

The USPTO issued its final guidelines for written description (66 Fed. Reg. 1099) in early 2001, republished at MPEP § 2163. The written description guidelines first instruct examiners to determine what the claim as a whole covers and then review the entire specification to determine whether all subject matter that is essential to the invention is actually recited in the claims. See written description guidelines at II(A)(1), (2). Next, the examiners are instructed to determine whether the applicant was in possession of all that is claimed. See the written description guidelines at II(A)(3). According to the guidelines, possession of a claimed invention can be shown by disclosure of structural characteristics, functional characteristics that correlate with structure or combinations thereof. See the written description

guidelines at II(A)(3)(a). Claims that encompass a genus must be supported by a written description of a representative number of species. See the written description guidelines at II(A)(3)(a)(2). The written description of the representative species of the genus can be shown by disclosure of structural characteristics, functional characteristics that correlate with structure or combinations thereof. Applicants submit that the examiner has not satisfied these guidelines in making the rejection, which alone is grounds for withdrawal of the rejection. Nevertheless, applicants demonstrate below that the structural requirements set forth in claims 53 and 60 find correspondence in the specification.

Aliphatic acyl groups

The specification discloses at page 5, lines 10-11 that membrane binding elements can be "fatty acid derivatives, such as fatty acyl groups." Further examples are set forth at page 5, lines 1-9 and page 16, line 32 to page 17, line 7. In this text, aliphatic acyl groups are exemplified as having about 8 to 18 methylene units, but are certainly not limited to 8 to 18 methylene units. According to the invention, candidate fatty acid derivatives include all those available to the skilled person. In fact, the term "about" means that the invention can be employed with numbers of methylene units outside of 8-18, such as 7 or 19 methylene units, for example. Thus, applicants' specification discloses fatty acid derivatives that are even broader than the phrase "aliphatic acyl group", and thus applicants' use of this phrase without a size limitation is not overly broad and does not amount to the inclusion of new matter.

Basic amino acids

Applicants have amended the claims to recite "basic amino acids," meaning that there must be at least two basic amino acids in the hydrophilic peptide binding element. Exemplary support is found in the specification at page 5, line 11; and page 8, lines 1-6. The amino acids need not be limited to "clusters" or just arginine and/or lysine residues. See, for example, page 22, lines 28-31 of the specification. The "clusters" that the examiner cites to on page 6, line 11 refer to the natural myristoyl-electrostatic switch, rather than applicants' invention. Applicants submit that the language employed is fully supported by the specification.

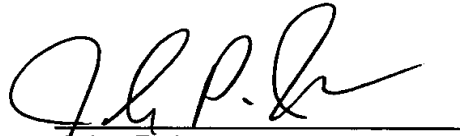
Applicants submit that the above discussion shows that it is clear that applicants had possession of the subject matter claimed in claims 53 and 60. Given the correspondence and applicants' identification of this correspondence, a heavy burden is placed upon the examiner to reject the claims given that the specification is presumed adequate. See MPEP § 2163.04 (Rev. 1, February 2003).

Request

Applicants submit that the claims are in condition for allowance, and respectfully request favorable consideration to that effect. The examiner is invited to contact the undersigned at (202) 912-2000 should there be any questions.

Respectfully submitted,

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